IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2236 OF 1998

Shri Baburao Kshirsagar
Adult, Occ: Social Service
Residing at Kasba Peth
Phaltan Tal: Phaltan
Dist: Satara. ..Petitioner

Vs.

1.State of Maharashtra

2.The Director of Municipal
Adminstration,
Maharashtra State, Bombay.

3.The Secretary, Urban Development
Department, Govt. of Maharashtra
Bombay.

4.The District Collector
Satara.

5.The Phaltan Municipal Council
Phaltan, Dist: Satara. ..Respondents

Mr.S.B.Deshmukh Advocate for Petitioner

Mr.R.M.Patne, A.G.P. for Respondent Nos.1 to 4

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 7TH MARCH, 2005.

JUDGMENT (PER F.I.REBELLO,J.)

. The Petitioner is a rate payer. By the present Petition he has challenged letter dated 14th January, 1998 issued by the Urban Development Department to all the District Collectors, Chief Officers of Municipal Councils. By that letter the Government in order to make the water supply scheme

of Municipality self sufficient directed that those Municipalities which had not levied the special water tax as prescribed, against them, immediate action should be taken which included (i) to take immediate action to raise the special water tax at the prescribed rate as per Government Notification dated 1st April, 1997. (ii) Municipalities which had refused to levy minimum water tax or sanctioned the water tax at a rate lower than the minimum rate, in respect of such Municipalities, to take action to cancel their Resolutions, (iii) unless the special water tax at the rate prescribed by the Government is levied, the Collector/Commissioner ought not to grant approval to the annual budget of the Municipalities.

2. The case of the Petitioner is that it is open to Municipalities to frame bye-laws, similarly it is also open to the Government to make bye-laws by virtue of the powers conferred under Section 112 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 which hereinafter shall be referred as ‘The Act’. Learned Counsel points out that by virtue of Section 108 (f) of the Act, it is open to Council to impose a special water tax for water supplied by the Council. By virtue of Section 112 notwithstanding any Rules, bye-laws or resolutions, specifying the amount or

rate at which tax is levied, a Council may pass a resolution at a special general meeting and decide to increase or reduce the rate at which such tax is leviable and to that extent, the bye-laws already sanctioned by the Government shall have to be deemed to have been substituted with effect from the date specified in the resolution.

. Petitioners contend that the Government by notification dated 1st April, 1998 had framed bye-laws for special water tax. It is submitted that the model bye-laws do not come into force as a matter of course but have to be adopted by the Council for them to come into force. In those cases where bye-laws were not adopted, it is yet open to the State Government to direct the Council to apply the model bye-laws but that has to be done in the manner prescribed by Section 323(5) of the Act. In the instant case that has not been done, and consequently the direction as contained in letter dated 14th January, 1998 are without the authority of law and consequently should be quashed and set aside.

. It is next submitted, placing reliance on Section 112 of the Act, that the Council if it decides to amend the bye-laws already sanctioned by the State Government can yet by a resolution

increase or reduce the tax but for that purpose has to fix the maximum and minimum rates in respect of such tax. From this it is submitted that while levying a tax, Respondents are duty bound to fix the minimum and maximum tax. In the instant case the bye-laws have not so provided and clearly therefore, the levy of tax without prescribing the maximum and minimum rate is contrary to the Section 112 of the Act.

3. On behalf of Respondent State Shri Pande Bhaskar Anandrao, Deputy Secretary in the Urban Development Department, Mantralaya has filed his affidavit. He has set out the various rates to be charged. It is then pointed out that the Maharashtra Water Supply and Sewerage Board, Mumbai has been supplying water to the Municipal Council areas and the Board has to sustain huge expenditure towards the water supply schemes and other schemes. The Board has taken loans from the World Bank and other financial Institutions for these water supply schemes. The Board has to recover appropriate sums towards principal amount and interest and other maintenance charges from the Municipal Councils in the State. On failure of the Councils to pay their dues, arrears had reached a sum of Rupees 304 crores by the end of March, 1997. Apart from that electricity charges were also due. In that context

it is set out that the Board had revised the water supply rates by notification dated 31st July, 1996 and in consequence thereof the Government also decided, to revise the rates of water supply/special water supply in respect of Municipal Councils on the revised scales. This was done by notification dated 26th June, 1978. It is then pointed out that the Municipal Council could not ignore the bye-laws issued by the Government. It is also pointed out that in so far as nonacceptance of budget is concerned by letter dated 6th July, 1998 the budget was allowed to be passed on the condition that the Municipal Councils will adopt the revised rates of water supply laid down under the Notification dated 1st April, 1997. The Council which is Respondent No.5 in the present petition has not filed any reply either supporting or opposing the reliefs sought by the Petitioner.

4. The first question therefore, which arises for consideration is whether in view of the notification dated 1st April, 1997 and subsequent letter dated 14th January, 1998 is it still open to the Petitioner to contend that there is failure to comply with the requirements of Section 323 of the Act. For that purpose we may consider firstly the scheme of the Act in the matter of levying tax. By virtue of Section 108, subject to any general or

special order which the State Government may make in this behalf, a Council may impose a tax for the purpose as set out in the Act. This includes a special water tax under section 108(f). By virtue of Section 323 it is open to the State Government to make model bye-laws on all or any of the matters in respect of which the Council is empowered to make bye-laws. The Respondent State has so done by publication dated 1st April, 1997. By virtue of Sub Section (2) of Section 323, if the Council has already made bye-laws in the matter of which model bye-laws are made by the State Government, the Council may adopt the model bye-laws with such minimum charges as the peculiar local circumstances may warrant. Then Sub Section (3) provides that if any time it appears to the Director that the bye-laws made by a Council on any matters are inadequate to regulate such matters, and model bylaws have been made by the State Government for such matters, the Director may by an order require the Council to adopt such model bye-laws modified to suit local conditions. By virtue of Sub Section (4) the Council shall comply with the orders of the Director, made under subsection (3) within two months of the date of such order. By virtue of Sub Section (5) if the Council fails to comply with the orders of the Director, the Director may, by notification in the Official gazette, apply such

model bye-laws with such modification to suit local conditions as he thinks necessary to that Council, in supersession of any bye-laws which the Council may already have on those matters. In that event, the model bye-laws so applied shall be deemed to have been duly made by the Council. By virtue of Sub Section (6) if the model bye-laws made by the State Government relate to the imposition, abolition, remission, alteration or regulation of any tax, the provisions of sub sections (3), (4) and (5) shall apply as if for the word "Director" the words "State Government" are substituted.

. It is in this context, that we have to consider the challenge as raised on behalf of the Petitioner herein.

. A perusal of letter dated 14th January, 1998 shows that the water supply schemes have to be run through Municipalities on no profit and no loss basis. The Government has already made model bye-laws, for water supply and special water tax. The letter further set out that the scheme is not self sufficient and instead of getting income the Municipalities are required to incurre expenditures. The Government therefore, thought it fit to make the scheme self sufficient and thereby has taken a decision to make changes in the rates, which it did

by notification dated 1st April, 1997, and accordingly the Municipalities were asked to levy the special water taxes. It had come to the notice of the Government that apart from same Municipalities, others had not made changes and in the light of that issued the said directions. There is no dispute that there are bye-laws framed under Section 323 (1). It is further not disputed that the Council had not adopted the bye-laws under Section (3). In these circumstances, it will have to examined, whether the letter dated 14th January, 1998 can be said to be a direction under Section 323(5). Under Sub-Section (3) it was open to the State Government to call on the Council to adopt bye-laws. The Councils then had to comply in terms of Sub-Section (4). On failure to comply it could direct the applications of such model bye-laws. In the instant case the Government had framed model bye-laws. These bye-laws had not been implemented by all the Municipalities. Bearing in mind the need to make the scheme self sufficient. the directions were issued as set out in paragraph No.2 of letter dated 14th January, 1998. In other words that can be said to be directions issued by the State Government and there has therefore been substantial compliance in so far as the requirement of Sub Sections (3) and (5) of Section 323. Once that be the case and considering the object and the purpose

for which the bye-laws were framed and the directions issued, it cannot be said that there has been non-compliance with the requirement of section 323(5). There has been substantial compliance. The Council which is the party of this Petition has not challenged the directions issued by the State Government. In our opinion therefore, considering the directions issued by the State Government to the Council, the challenge on that count at the instance of a rate payer will have to be rejected.

5. The next contention is based on a reading of Section 112 of the Act. When the proviso speaks of the maximum and minimum rate of tax, it does not mean that if there is no maximum and minimum rates still while prescribing rates there must be a provision for maximum and minimum rate. In our opinion it is only in those cases where the tax is levied in which there are slabs for maximum and minimum will the proviso be attracted. A reading of Section 112 with Section 323, would indicate that the power conferred under Section 112 can only be invoked, if the rates specified in the bye-laws earlier sanctioned by the State Government and made by the Council, are to be increased or decreased. For the purpose of deciding the issue all that we can say is that it is not mandatory for the Council to frame bye-laws which provide for both the maximum

and minimum rates of tax. There is no such requirement. It is within the sole competence of the Council to fix the rates or for the Government to do so. This is an exercise in Sub-ordinate Legislation. It is only in the event if maximum and minimum rates have been prescribed then the proviso to that extent may apply. We therefore, find no merit in the second contention also.

7. For the aforesaid reasons, Rule discharged. There shall however, be no order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)